

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

Filed: January 4, 2022

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JAMIE GARDNER,

Petitioner,

v.

SECRETARY OF HEALTH
AND HUMAN SERVICES,

Respondent.

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UNPUBLISHED

No. 17-959V

Special Master Gowen

Attorneys' Fees and Costs

Lawrence R. Cohan, Saltz Mongeluzzi & Bendesky, Philadelphia, PA, for Petitioner.

Lara A. Englund, United States Department of Justice, Washington, DC, for Respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

On September 22, 2021, Jamie Gardner ("Petitioner") filed a motion for attorneys' fees and costs. Motion for Attorney Fees and Costs ("Fees App.") (ECF No. 90). For the reasons discussed below, I **GRANT** Petitioner's motion for attorneys' fees and costs and award a total of **\$51,184.29**.

I. Procedural History

On July 17, 2017, Petitioner filed a petition in the National Vaccine Injury Compensation Program.² Petitioner alleged that she suffered from chronic inflammatory demyelinating polyneuropathy as a result of receiving an influenza vaccination on September 22, 2015. *See* Petition (ECF No. 1). On February 27, 2021, the parties filed a stipulation, which I adopted as my

¹ I intend to post this Ruling on the United States Court of Federal Claims' website. **This means the Ruling will be available to anyone with access to the Internet.** In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access. Because this unpublished ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services).

² The National Vaccine Injury Compensation Program is set forth in Part 2 of the National Childhood Vaccine Injury Act of 1986, Pub L. No. 99-660, 100 Stat. 3755, codified as amended, 42 U.S.C. §§ 300aa-1 to -34 (2012) ("Vaccine Act" or "the Act"). All citations in this decision to individual sections of the Vaccine Act are to 42 U.S.C.A. § 300aa.

Decision awarding compensation on the same day. (ECF No. 84).

On September 22, 2021, Petitioner filed a motion for final attorneys' fees and costs. Petitioner requests compensation for her attorneys in the total amount of \$51,653.89, representing \$36,900.60 in attorneys' fees and \$14,753.29 in costs. Fees App. at 2. Pursuant to General Order No. 9, Petitioner warrants she has not personally incurred any costs in pursuit of this claim. *Id.* Respondent reacted to the fees motion on September 24, 2021, stating that "Respondent is satisfied the statutory requirements for an award of attorneys' fees and costs are met in this case." Response at 2 (ECF No. 91). Petitioner did not file a reply thereafter but filed a supplementation of additional documentation for attorneys' costs on November 10, 2021. (ECF NO. 92).

The matter is now ripe for adjudication.

II. Analysis

Section 15(e) (1) of the Vaccine Act allows for the Special Master to award "reasonable attorneys' fees, and other costs." § 300aa-15(e)(1)(A)–(B). Petitioners are entitled to an award of reasonable attorneys' fees and costs if they are entitled to compensation under the Vaccine Act, or, even if they are unsuccessful, they are eligible so long as the Special Master finds that the petition was filed in good faith and with a reasonable basis. *Avera v. Sec'y of Health & Human Servs.*, 515 F.3d 1343, 1352 (Fed. Cir. 2008). Here, because Petitioner was awarded compensation pursuant to a stipulation, she is entitled to a final award of reasonable attorneys' fees and costs.

Petitioners "bea[r] the burden of establishing the hours expended, the rates charged, and the expenses incurred" are reasonable. *Wasson v. Sec'y of Health & Human Servs.*, 24 Cl. Ct. 482, 484 (1993). Adequate proof of the claimed fees and costs should be presented when the motion is filed. *Id.* at 484 n. 1. The special master has the discretion to reduce awards *sua sponte*, independent of enumerated objections from the respondent. *Sabella v. Sec'y of Health & Human Servs.*, 86 Fed. Cl. 201, 208–09 (Fed. Cl. 2009); *Savin v. Sec'y of Health & Human Servs.*, 85 Fed. Cl. 313 (Fed. Cl. 2008), *aff'd* No. 99–537V, 2008 WL 2066611 (Fed. Cl. Spec. Mstr. Apr. 22, 2008).

a. Attorneys' Fees

Petitioner requests the following hourly rates for the work of her counsel: for Mr. Lawrence Cohan, \$400.00 per hour for work performed in 2016, \$420.00 per hour for work performed in 2017, \$440.00 per hour for work performed in 2018, \$450.00 per hour for work performed in 2019, \$484.00 per hour for work performed in 2020, and \$509.00 per hour for work performed in 2021; and for Mr. David Carney, \$290.00 per hour for work performed in 2016 and 2017, and \$315.00 per hour for work performed in 2018.

I have recently considered the reasonableness of Mr. Cohan's hourly rates and found that a reasonable hourly rate for his work in 2017 is \$400.00 per hour and a reasonable hourly rate for his work in 2020 is \$470.00. *Green v. Sec'y of Health & Human Servs.*, No. 16-008V, 2021 WL 1010727, at *2-3 (Fed. Cl. Spec. Mstr. Feb. 23, 2021). Additionally, the requested rate for 2021 exceeds what Mr. Cohan has previously been awarded. *See Leshner v. Sec'y of Health and Human Servs.*, No. 17-1076V, 2021 WL 1526198, at *2 (Fed. Cl. Spec. Mstr. Mar. 17, 2021) (indicating that Mr. Cohan billed at \$484.00 per hour for work in 2021 and was awarded that rate). I shall

apply the aforementioned rates to Mr. Cohan's time billed in this case, resulting in a reduction of \$469.60.

Turning next to the hours billed, I find that the overall hours spent on this matter appear to be reasonable. The entries reasonably and accurately describe the work performed and the length of time it took to perform each task. Respondent also has not identified any particular billing entries as being objectionable or unreasonable. Therefore, the hours requested are compensated without adjustment. Petitioner is awarded final attorneys' fees of \$36,431.00.

b. Attorneys' Costs

Like attorneys' fees, a request for reimbursement of costs must be reasonable. *Perreira v. Sec'y of Health & Human Servs.*, 27 Fed. Cl. 29, 34 (Fed. Cl. 1992). Petitioner requests total attorneys' costs in the amount of \$14,753.29. This amount is comprised of acquiring medical records, postage, the Court's filing fee, travel costs associated with attending a fact hearing, and work performed by petitioner's life care planner. (ECF No. 92 at 2-3). Petitioner has provided adequate documentation supporting all of the requested costs, and all appear reasonable in my experience. Petitioner is therefore entitled to the full amount of costs sought.

III. Conclusion

In accordance with the foregoing, Petitioner's motion for attorneys' fees and costs is **GRANTED**. I find that Petitioner is entitled to a reimbursement of attorneys' fees and costs as follows:

Attorneys' Fees Requested	\$36,900.60
(Reduction of Fees)	-(\$469.60)
Total Attorneys' Fees Awarded	\$36,431.00
Attorneys' Costs Requested	\$14,753.29
(Reduction of Costs)	-
Total Attorneys' Costs Awarded	\$14,753.29
Total Attorneys' Fees and Costs	\$51,184.29

Accordingly, I award the following a lump sum in the amount of \$51,184.29, representing reimbursement for Petitioner's attorneys' fees and costs, in the form of a check payable to Petitioner and her attorney, Mr. Lawrence Cohan.³

³ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs," and fees for legal services rendered. Furthermore, Section 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir. 1991).

In the absence of a motion for review filed pursuant to RCFC Appendix B, the clerk of the court shall enter judgment in accordance herewith.⁴

IT IS SO ORDERED.

/s/Thomas L. Gowen

Thomas L. Gowen
Special Master

⁴ Entry of judgment can be expedited by each party's filing of a notice renouncing the right to seek review. Vaccine Rule 11(a).